


OCT 31 2007

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

JOHN F. CORCORAN, CLERK
BY:  DEPUTY CLERK

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|---------------------------|---|--------------------------------|
| WILLIAM E. HILL, |) | |
| Petitioner, |) | Civil Action No. 7:07-cv-00521 |
| |) | |
| v. |) | <u>MEMORANDUM OPINION</u> |
| |) | |
| COMMONWEALTH OF VIRGINIA, |) | By: Samuel G. Wilson |
| Respondent. |) | United States District Judge |

Petitioner William E. Hill, a Virginia inmate proceeding pro se, filed this action as a civil rights action pursuant to 42 U.S.C. § 1983. However, it appears that he is challenging his criminal conviction in Botetourt County Circuit Court for assault of a correctional officer.¹ To that extent, the court will construe his submission as a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. In his petition, Hill claims that he was denied his right to be indicted by a grand jury, denied due process, and denied the “right to be informed of the nature and cause of the accusation.” As relief, Hill asks the court to “quash [the] amended indictment” and “dismiss the petite criminal malicious prosecution.” The court finds that Hill has failed to exhaust his available state court remedies and, therefore, dismisses this action without prejudice.

I.

The court takes judicial notice of the fact that Hill filed a previous civil rights action in this court, with related facts. See Civil Action No. 7:06cv00687 (W.D. Va. Dec. 14, 2006). On August 24, 2006, Hill was charged with an institutional infraction of simple assault of a non-inmate while housed at Botetourt Correctional Center. Since that incident, Hill was transferred to Red Onion State Prison and then later to Nottoway Correctional Center, where he is currently housed.

On October 2, 2006, Hill was charged in the Botetourt County Circuit Court with assaulting

¹ See Commonwealth of Virginia v. Hill, Criminal Case Nos. CR06000570-00 and CR07000334-00 (Botetourt County, Va. Cir. Ct. Oct. 23, 2007).

a correctional officer, in violation of Va. Code § 18.2-57.² See Commonwealth of Virginia v. Hill, Criminal Case No. CR06000570-00 (Botetourt County, Va. Cir. Ct. Oct. 23, 2007). The state court's electronic records reveal that although there was a jury trial in this case, it ultimately concluded by Hill's guilty plea on October 23, 2007.³ On that same date, Hill was sentenced to two years incarceration, with all but six months suspended.

II.

A federal court cannot grant a habeas petition unless the petitioner has exhausted the remedies available in the courts of the state in which he was convicted. Preiser v. Rodriguez, 411 U.S. 475 (1973). If the petitioner has failed to exhaust state court remedies, the federal court must dismiss the petition. Slayton v. Smith, 404 U.S. 53 (1971). In Virginia, a non-death row felon ultimately must present his claim to the Supreme Court of Virginia and receive a ruling from that court, before a federal district court may consider his claims. See Va. Code § 8.01-654. In this case, Hill pled guilty to assaulting a correctional officer and was sentenced on October 23, 2007. As this petition was postmarked to the court on October 29, 2007, it is clear that Hill has not had time to appeal his conviction to the Court of Appeals of Virginia and to ultimately present his claims to the Supreme Court of Virginia, as required. Furthermore, he may still seek state habeas relief. Accordingly, the court dismisses Hill's petition without prejudice for failure to exhaust state court remedies.

III.

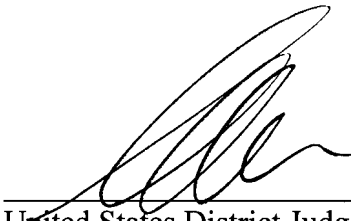
The Clerk is directed to send a certified copy of this Memorandum Opinion and

² It appears that Hill was also charged with assaulting a correctional officer, in violation of Va. Code § 18.2-57(C), on June 4, 2007, however, it is not clear whether he is attempting to challenge that conviction in this action. See Commonwealth of Virginia v. Hill, Criminal Case No. CR07000334-00 (Botetourt County, Va. Cir. Ct. Oct. 23, 2007).

³ Electronic case details available online at: <http://wasdmz1.courts.state.va.us/CJISWeb/MainMenu.do>.

accompanying Order to the petitioner.

ENTER: This 31st day of October, 2007.



United States District Judge